National Employers' Mutual General Insurance Association Ltd v Globe Trawlers Pte Ltd

COURT OF APPEAL (SINGAPORE) — CIVIL APPEAL NO 13 OF 1989
YONG PUNG HOW CJ, LAI KEW CHAI AND CHAO HICK TIN JJ
26 MARCH 1991

Insurance — Material misdescription — Whether there was material misdescription in proposal form — Meaning of 'complete' and 'unit' — Whether insurer entitled to avoid policy

Insurance — Agent — Filling of proposal form and fixing of rates by insurance agent — Whether insurance agent had authority to bind insurer — Whether agent acting for insured — Insured signed proposal form

The respondents (plaintiffs) were a company in the business of building coastal fishing trawlers and other vessels. They were engaged, toward the end of February 1981, in the building of two trawlers, 'Super Trawl' and 'Coastal Monitor II'. The respondents had estimated that the trawlers would be completed by 25 May 1981 but construction was delayed and extended to 25 June 1981. On 22 May 1981, the respondents applied to the appellants for the issue of a fire policy and burglary policy in respect of 'one complete unit of wooden fishing trawler' which was intended to be 'Super Trawl'. The fire and burglary policies were issued on 23 May 1981 and were expressed to cover that one complete unit of fishing trawler for a period of one month. On 5 June 1981, the respondents applied for fire and burglary insurance for 'one complete unit of wooden fishing trawler' which was intended to be 'Coastal Monitor II' and 'machinery, utensils and hand tools including materials, the property of the insured while contained in the building'.

On 6 June 1981, a fire broke out at 'Super Trawl' and substantially destroyed it. 'Coastal Monitor II' was not burnt but sustained cracks on the glue at the timber joints and hull. After inspection both vessels were unacceptable for classification. The respondents made a claim for both vessels. The appellants raised three defences: (a) there was a material misdescription in the proposal form; (b) the claim by the respondents was fraudulent; (c) the damage was caused by the respondent's wilful act of connivance. The trial judge dismissed the defences and gave judgment in favour of the respondents for the insured sum of $600,000. [See [1989] 1 MLJ 463.]

Held, allowing the appeal:

(1) The proposal form dated 22 May 1981 for 'Super Trawl' described the property to be insured to be 'one complete unit of wooden fishing trawler with engine, motor and accessories and equipment' and this was declared correct by the respondents. On evidence before the trial court, it was equally clear that the two trawlers were not yet completed on the respective dates of the proposals. The evidence also showed that on the day of the fire, the main engine for 'Super Trawl' was still lying on the ground and the propellor had not been installed. Having regard to the plain ordinary meaning of the words 'complete' and 'unit' the expression 'one complete unit of wooden fishing trawler' must, in the overall context of the description given, mean a trawler which was complete with all its parts, including engine, machinery and equipment in place. In truth, 'Super Trawl' was an incomplete trawler.

(2) The insurance brokers did not have the authority to bind the appellants without referring back to them and getting approval to accept the risk. The proposal form itself stated quite clearly that 'liability does not commence until this proposal has been accepted by the association and a premium paid except as provided by any official covering note issued'. White it is true that the broker in completing the proposal form on behalf of the respondent did rate the risk and calculate the premium due, that in no way suggests that the broker had authority to commit the insurers. It is common knowledge in the industry that the material used for risk calculation and premium due is furnished beforehand by the insurers.

(3) The general rule is that a broker who completes the proposal form is not acting as an agent for the insurer but for the insured. The courts have departed from the general rule only when there have been some unusual circumstances. In this case, as the respondents read and signed the proposal form the respondents should not be allowed to hide behind the broker.

Cases referred to

1 *James Miller & Partners* v *Whitworth Street Estates* [1970] AC 53 (folld)
2 *Woolcott* v *Express Insurance Co Ltd* [1979] 1 Lloyd's Rep 231 (distd)
3 *Newsholme Bros* v *Road Transport & General Insurance Co Ltd* [1929] 2 KB 356 (folld)
4 *Biggar* v *Rock Life Assurance Co* [1902] 1 KB 516 (folld)
5 *Bawden* v *London, Edinburgh & Glasgow Assurance Co* [1892] 2 QB 534 (refd)

Appeal from: Suit No 4179 of 1981 (High Court, Singapore)

Patrick Twiff QC *(KK Tang* with him*)* for the appellants.
Philip Jeyaretnam (David Liew with him) for the respondents.

Cur Adv Vult

Chao Hick Tin J (delivering the judgment of the court): This appeal raises primarily a point of construction as to whether there was a material misdescription in the proposal for an insurance cover against fire.

The respondents (the plaintiffs in the action) were a company incorporated in Singapore with the object, inter alia, of building coastal fishing trawlers and other vessels. The respondents were towards the end of February 1981 engaged in the building of two trawlers, 'Super Trawl' and 'Coastal Monitor II' which they hoped would be completed in time for the Asian Fishing & Aquaculture Exhibition and Conference scheduled to be held at the World Trade Centre between 2 and 6 June 1981. The construction of the trawlers was undertaken at a workshop at Sembawang which the respondents had rented from the Port of Singapore Authority.

The respondents applied to the appellants (the first defendants in the action) for the issue of a workmen's compensation policy for 20 workers covering a period of three months from 26 February 1981 to 25 May 1981. The respondents estimated that the two trawlers would

be completed within that period. However, the construction was delayed and on an application by the respondents the workmen's compensation policy was, on 23 May 1981, extended by one month to 25 June 1981 but the number of workers covered was substantially reduced to only four.

On 22 May 1981 the respondents applied to the appellants for the issue of a fire policy and a burglary policy in respect of 'one complete unit of wooden fishing trawler with ...' and that was intended to be 'Super Trawl'. The fire and burglary policies issued were dated 23 May 1981 and were expressed to cover that one complete unit of fishing trawler for a period of one month, from 25 May to 25 June 1981. The insured amount was $600,000. On 5 June 1981, the respondents applied for fire and burglary insurance cover for two additional items of property for the period 5 June 1981 to 5 August 1981. The first item was 'one complete unit of wooden fishing trawler with ...' and that was intended to be 'Coastal Monitor II', and the second item was 'Machinery, utensils and hand tools including materials, the property of the insured while contained in the building ...'. The cover for these two additional items was eventually effected by way of separate endorsements on the earlier fire and burglary policies.

At about 6pm on 6 June 1981, a fire broke out on 'Super Trawl' and substantially destroyed it. 'Coastal Monitor II' was, however, not burnt, but it sustained cracks on the glue at the timber joints and hull. The German Classification Society, Germanischer Lloyd, after inspection, found both vessels unacceptable for classification. The respondents made a claim for both vessels on the basis of a total loss. The appellants rejected the claim; thus the institution of the action by the respondents.

At the hearing below, Tan Brothers Insurance Agencies Pte Ltd were brought in later in the proceedings as the second defendants. The second defendants were insurance brokers and they had assisted the plaintiffs in effecting the three policies with the first defendants/appellants. The plaintiffs'/respondents' claim against the second defendants was dismissed and no appeal was filed against that part of the judgment. Accordingly, the second defendants are not a party to this appeal.

As found by the learned trial judge, immediately before the fire, 'Super Trawl' and 'Coastal Monitor II' were not completed. The respondents nevertheless participated in the exhibition and rented a stand at the exhibition site, where photographs of the semi-completed 'Super Trawl' were exhibited.

The respondents were effectively owned by one Fritz Schneppe and his wife. Fritz Schneppe was a qualified civil engineer from West Germany.He had worked overseas for some years. One of his interests was to design fishing vessels. The two trawlers in question were designed by him.

At the trial three defences were raised by the appellants. First, there was a material misdescription in the proposal form. Second, the claim by the respondents was fraudulent. Third, the damage was caused by the respondents' wilful act or with their connivance. The learned trial judge dismissed all the three defences and gave judgment in favour of the respondents for the sum of $600,000 being the insured sum for 'Super Trawl'. This is an appeal against that judgment. The claim in respect of 'Coastal Monitor II' was not accepted by the learned judge.

Before us, the appellants no longer pursued the third ground.

We will now examine the first ground of the appeal which is the question of material misdescription. In the proposal form dated 22 May 1981 for 'Super Trawl' the following particulars were entered and declared as correct by Fritz Schneppe:

1	Address of property to be insured	:	Gdn 218 RNAD (East), Sembawang Wharves, Singapore
2	Construction of four main walls and roof	:	Corrugated iron sheets throughout
3	No of storeys	:	Single storey
4	How are premises occupied	:	Workshop & storage

Property to be insured:

One complete unit of wooden fishing trawler with engine, motor and accessories and equipment.

Pursuant to the proposal, a fire policy was issued and the property insured was described in the said terms. As stated above, the policy was on 5 June 1981, on a further proposal by the respondent, extended to cover another '1 complete unit of wooden fishing trawler ...' for a value of $500,000. It is not in question that if there was a misdescription, it was a material one. The relevant provision in the policy governing material misdescription reads as follows (condition 1):

> If there be any material misdescription of any of the property hereby insured, or of any building or place in which such property is contained, or any misrepresentation as to any fact material to be known for estimating the risk, or any omission to state such fact, the Association shall not be liable upon this Policy so far as it relates to property affected by any such misdescription, misrepresentation or omission.

From the evidence there cannot be any doubt that the appellants knew that the respondents were in the business of building trawlers. As was mentioned above, the

appellants had issued a workmen's compensation policy in favour of the respondents effective from 26 February 1981 to 25 May 1981 covering a total of 20 skilled and unskilled workers. The policy was on 23 May 1981 extended for a further period of one month up to 25 June 1981 but the extent of coverage was substantially reduced to cover only four workers.

On the evidence before the court below it is equally clear that the two trawlers were not yet completed on the respective dates of the proposals. Indeed the precise finding of the learned judge on the state of construction of the two trawlers on the date of the fire is as follows:

> By early June 1981 the 'Super Trawl' was substantially built but not wholly completed; the hull had been completed and certain equipment, machinery and engine had been installed. The 'Coastal Monitor II', however, was still at an initial stage of construction, and from the photographs produced only a skeleton of the hull had been built.

The evidence also shows that on the date of the fire the main engine for 'Super Trawl' was still lying on the ground some 15 to 20m away from the hull. The propellor had also not been installed.

Mr Twigg for the appellants submitted that on these facts relating to the state of 'Super Trawl' it was abundantly clear that the vessel was not finished; it was incomplete. He laid particular emphasis on the words 'one complete unit'. He contended that the true position was that there was no 'one complete unit' but rather a number of separate units; only after everything was fitted onto the trawler hull could one correctly describe the 'trawler' as 'one complete unit'.

Counsel also referred us to a number of dictionaries to show the meanings of the words 'complete' and 'unit'. For purposes of contrast we were also invited to look at the dictionary meanings of the word 'incomplete'.

In the *Shorter English Dictionary* the word 'complete', as an adjective, is given these meanings: '1 having all its parts or elements; entire, full. 2 Whole; furnished, ended, concluded. 3 Entire. 4 without defect.' That dictionary also gives these meanings to the word 'incomplete': 'not complete; not fully formed, made or done; not whole or thorough; wanting some part; unfinished, defective.'

In so far as the word 'unit' is concerned, it has different shades of meaning, depending on the context. We think *Chambers 20th Century Dictionary* sets it out most concisely as follows:

> a single thing or person: a single element, section, or item regarded as the lowest subdivision of a whole: a group of persons forming a subdivision of a larger body: a distinct part within a piece of electrically powered equipment which has its own specific function: a single complete domestic fixture combining what are sometimes separate parts: the least whole number:anything taken as one: a quantity by reference to which others are measured.

Counsel for the respondents agreed that the word 'complete' could mean 'whole' or 'completed'. He, however, argued that for the expression to bear the meaning sought by the appellants it should be worded 'one unit of completed wooden trawler'. He said any adjective intending to describe the fully constructed status of the wooden fishing trawler would qualify the words 'wooden fishing trawler' and not the word 'unit'.

In our judgment, having regard to the plain ordinary meanings of the words 'complete' and 'unit', the expression 'one complete unit of wooden fishing trawler' must, in the overall context of the description given, mean a trawler which was complete with all its parts, including engine, machinery and equipment, in place. This is the plain ordinary meaning that emerges from those words. Otherwise it would mean that, to adopt the words of counsel for the appellants, if the trawler (if we could in fact call it such) were in a thousand pieces, spread all over the workship and store, it could nevertheless be properly described as 'one complete unit'. That obviously cannot be so. In truth 'Super Trawl' was an incomplete trawler.

In reaching the conclusion that there was no misdescription, the learned judge also took into account the factual matrix, ie that the respondents were in the business of building wooden trawlers at the workshop and that the appellants had issued a workmen's compensation policy to the respondents, which policy was subsequently extended. We do not think these facts necessarily suggest that the appellants knew that the trawler or trawlers were still under construction; nor are these facts necessarily inconsistent with the fact that a trawler, and subsequently another trawler, could have been completed. In the ordinary course of events, every trawler under construction will at a certain point in time be completed. It cannot forever remain incomplete. And if one were to bear in mind that, when the fire policy was applied for, the respondents also applied to extend the workmen's compensation policy for only another month (the extension of the workmen's compensation policy was granted on the same day that the fire policy was issued) and covering a much reduced number of workers, it would not be unreasonable for the insurers to think that a trawler had been completed. It is not without some significance that though the fire policy was applied for on 22 May 1981, it was only to take effect on 25 May 1981. Admittedly a trawler, when completed, would normally be put to use fairly soon thereafter. But the fact that a trawler builder envisaged that a completed trawler might be left in the 'workshop or storage' for another month or two, thus requiring a fire policy, is neither here nor there. One need not go to extremes to visualize what could have held things up. The appellants did not know who the buyer was (if any) or his nationality. There was certainly no duty on the appellants to check why the completed trawler was not deliv-

ered to the purchaser or put to sea. It was the responsibility of the respondents to give the correct particulars or description.

In construing those crucial words in the description the learned judge also took into account the fact that while the proposal to insure 'Coastal Monitor II' was submitted on 5 June 1981, the endorsement on the fire policy was not issued until 19 June 1981, well after the fire had occurred. He held that this necessarily suggested that the appellants knew 'what the description meant'. However, it is a well established rule that a contract cannot be construed by reference to the subsequent conduct of the parties: see the House of Lords' decision in *James Miller & Partners* v *Whitworth Streets Estates Ltd.*[1]

There is another aspect relating to the question of material misdescription which we must address. The learned judge found that the brokers were the agents of the appellants in relation to the three policies issued to the respondents. He also found that the insurance brokers, through one Robert Tan, knew at the material times that the trawlers were under construction and that such knowledge of the brokers could be imputed to the appellants. The case *Woolcott* v *Excess Insurance Co Ltd*[2] was relied upon.

Counsel for the appellants submitted that the learned judge was wrong to have made this finding which was a question of mixed fact and law. On the evidence it seems to us unquestionable that the insurance brokers did not have the authority to bind the appellants without referring back to them and getting their approval to accept the risk. The proposal form itself stated quite clearly that 'liability does not commence until this proposal has been accepted by the Association and the premium paid, except as provided by any official covering note issued.' While it is true that Robert Tan, in completing the proposal form on behalf of the respondents, did rate the risk and calculate the premium due, that in no way suggests that the brokers had authority to commit the insurers. It is common knowledge in the industry, and Robert Tan had also said so, that material used for risk classification and for calculating the premium due in respect of each classification of risk is furnished beforehand by insurers to agents. Based on that, calculations are made by the agents.

It should be noted that the insurance brokers here, the second defendants, were not just the commission agents of the appellants. They were also the agents of other insurance companies. The learned judge found that Robert Tan recorded the information given to him by the respondents in the proposal form. The form was read and approved by Fritz Schneppe, who then signed it. The learned judge also found that, as between the respondents and the brokers, even if there was a material misdescription, the respondents were not entitled to recover against the brokers because Fritz Schneppe had approved what was stated in the proposal form.

The general rule is that a broker who completes the proposal form is not acting as an agent for the insurer but for the insured. This is laid down in the leading case *Newsholme Bros* v *Road Transport & General Insurance Co Ltd.*[3] We will cite only two passages from the case — first of Scrutton LJ (at p 369):

> I find considerable difficulty in seeing how a person who fills up the proposal can be the agent of the person to whom the proposal is made. A man cannot contract with himself. A makes a proposal to B by signing it, and communicating it to B. If A gets someone — C — to fill up the form for him before he signs it, it seems to me that C in doing so must be the agent of A who has to make the proposal, not of B who has to consider whether he will accept it. If C is also the agent of B to procure proposals, and induces A to make a proposal by representing that a certain form of proposal contains the particulars that B wants to know, when it does not the remedy seems to be to rescind the written contract procured by misrepresentation, not to alter the written contract and claim the benefit of it as altered.

and second of Greer LJ (at p 382):

> ... I also take the view that notice to the agent whose duty was to obtain a signed proposal form and send it to the company, was not notice to the company of anything inconsistent with the signed proposal form, and that in filling up the form, whether he mistook the instructions of the insured, or whether he intentionally filled in something different from what he was told, he was not acting as the agent of the company, but as the agent of the insured.

In an earlier case *Biggar* v *Rock Life Assurance Co*[4] Wright J decided that an insured who signed a proposal form was bound by what he stated therein even though the inaccurate answers were written in by the agent.

The law is summarized in 25 *Halsbury's Laws of England* (4th Ed) at para 396 as follows:

> Except in the case of industrial assurance, in filling in the answers in a proposal form an insurance agent is normally regarded as the agent for the proposer at the proposer's request, express or implied. Even if the agent knows the truth, his knowledge is not in that case imputed to the insurers. If he is careless in filling up the form, it is the proposer, not the insurers, who may maintain an action in negligence against him. Further, where the proposer himself signs the proposal form, as is usually insisted upon by insurers, by signing he adopts whatever answers the agent has inserted and makes them his own. This is clearly the case where he reads and approves the answers before signing, but the position is the same if he chooses to sign the proposal without reading them or if he signs the form when it is blank, leaving it to the agent to insert the answers later. It is irrelevant to inquire how the inaccuracy arose, whether the agent acted honestly or dishonestly, whether the agent had forgotten or misunderstood the correct information he had been given or whether the answers were a mere invention on the part of the agent. If the result is that inaccurate or inadequate information is given on material matters or

> that a contractual stipulation as to accuracy or adequacy of any information given is broken, it is the proposer who has to suffer.

The courts have departed from the general rule only where there have been some unusual circumstances in the case, eg the insured was blind or illiterate. *Bawden* v *London, Edinburgh & Glasgow Assurance Co*[5] was effectively concerned with an illiterate insured. To the extent that *Bawden*'s case[5] sought to lay down any general rule, Scrutton LJ in *Newsholme*[3] seriously doubted its validity.

In our opinion, where an insurance broker filled up a proposal form on behalf of an insured of full capacity, the insured should not be allowed to hide behind the broker. The reasons given by Scrutton LJ in *Newsholme*[3] are convincing (at pp 375-376):

> If the answers are untrue and he knows it, he is committing a fraud which prevents his knowledge being the knowledge of the insurance company. If the answers are untrue, but he does not know it, I do not understand how he has any knowledge which can be imputed to the insurance company. In any case, I have great difficulty in understanding how a man who has signed, without reading it, a document which he knows to be a proposal for insurance, and which contains statements in fact untrue, and a promise that they are true, and the basis of the contract, can escape from the consequences of his negligence by saying that the person he asked to fill up for him is the agent of the person to whom the proposal is addressed.

A fortiori, in the case of an insured who had approved and signed a proposal form which contained material misdescriptions.

We note that Robert Tan in cross-examination said that in filling the form, he was acting as the agent of the insurance company. This might be Robert Tan's impression, but it certainly was not the position in law. The proposal was from the respondents and if it was filled up by Robert Tan with information furnished to him by Fritz Schneppe, Robert Tan was acting as the agent of the respondents. We would stress that the respondents, through Fritz Schneppe, had declared that the statements and particulars set out in the proposal had been 'read over and checked are true'.

The case *Woolcott* v *Excess Insurance Co Ltd*[2] does not appear to us to establish any general rule that an insurance broker's knowledge is automatically imputed to the insurers. That case was more concerned with a question of fact as to whether the agent knew about the previous criminal record of the insured. It also dealt with the principles upon which an appellate court should disturb a finding of fact of the court below. In that case, it was accepted that if there were such knowledge, the knowledge would be imputed to the insurers. Most importantly we note that in *Woolcott*[2] the agent was given the authority to issue a cover right away to the insured as appears from the judgment of Megaw LJ at p 233:

> Mr Smith, acting on behalf of the third party (the insurance agents) arranged on 28 January 1974 for insurance cover to be given forthwith by Excess Insurance Co Ltd, the defendants in the action. This was within the authority which the third party had as agents for the defendants.

That was a different sort of situation altogether. Obviously in that case, the agent stood in the shoes of the insurers and his knowledge would be the knowledge of the insurers.

In the light of the foregoing we respectfully have to differ from the learned judge. We find that there was a material misdescription in the proposal form on 'Super Trawl' and that the appellants are entitled to avoid the policy. Further, while the learned judge found that Robert Tan knew that the trawlers were still under construction, we hold that in the circumstances of the case, such knowledge could not be imputed to the appellants.

As the first ground is sufficient to dispose of the entire appeal, there is no need for us to proceed to deal with the second ground raised in the appeal. Accordingly, the judgment entered against the appellants is set aside. The action of the respondents against the appellants is dismissed with costs, here and below.

Appeal allowed.

Solicitors: *Tang & Partners; Robert WH Wang & Wu.*

Reported by *Yap Shao Sin*